



**THE ATTORNEY GENERAL
OF TEXAS**

October 2, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Mike Driscoll
Harris County Attorney
1001 Preston, Suite 634
Houston, Texas 77002

LO-89-75

Dear Mr. Driscoll:

You ask who is authorized to appoint the purchasing agent of Harris County. You advise that by an order entered on June 13, 1989, a board composed of the district judges in Harris County and the county judge re-appointed the purchasing agent of Harris County for a term of two years beginning July 23, 1989.

Your concern is prompted by the passage of two bills by the 71st Legislature that address the composition of the board authorized to appoint the purchasing agent. Both bills seek to amend section 262.011(a) of the Local Government Code. Section 262.011(a) provided that in a county with a population of 74,000 or more, a board composed of the judges of the district courts and the county judge may appoint a suitable person to act as the county purchasing agent for a term of two years.

H.B. 1434 provides that in a county with a population of 150,000 or less, the board is composed of the judges of the district courts in the county and the county judge. Acts 1989, 71st Leg., ch. 1250, § 5, at 5048. In any other county, the board is composed of three judges of the district court and two members of the commissioners court. H.B. 1671 provides that the board is composed of the judges of the district court in a county and the county judge. Acts 1989, 71st Leg., ch. 561, § 1, at 1869. (H.B. 1671 also addresses the matter of purchases in counties with less than 20,000 that have no purchasing agent). Acts 1989, 71st Leg., ch. 561, § 3, at 1869.

Since Harris County has a population in excess of 150,000, H.B. 1434 would require that the board be composed of three district judges and two members of the commissioners court (provision is made for selection of members by majority vote of their respective bodies). On the other hand, H.B. 1671 would not change the composition of the

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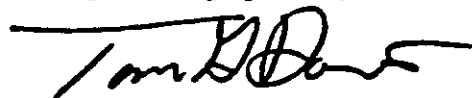
board in Harris County. Under H.B. 1671 the board in Harris County would still be composed of the judges of the district court in the county and the county judge.

It should be noted that the re-appointment of the purchasing agent for a term beginning July 23, 1989, predates the effective dates of both bills. The effective date of H.B. 1671 is August 28, 1989, and the effective date of H.B. 1434 is September 1, 1989. A statute is presumed to be prospective in its operation unless expressly made retrospective. Gov't Code § 311.022. It appears that the composition of the board making this appointment was in accordance with the provisions of section 262.011(a) effective on the date of the appointment.

The determination of the composition of the board authorized to make future appointments of a purchasing agent requires a resolution of whether H.B. 1434 and H.B. 1671 may be harmonized so that effect may be given to each. If not, section 311.025 of the Government Code provides if amendments to the same statute are enacted at the same session of the legislature are irreconcilable, the latest in date of enactment prevails.

Insofar as H.B. 1434 and H.B. 1671 are applicable to the composition of the board authorized to appoint the county auditor in Harris County, they are irreconcilable. The date of enactment on both bills was May 29, 1989. The House of Representatives was the last to act on both bills. The House Journal reflects the House's adoption of the conference committee report on H.B. 1671 at page 3539 of the journal and time of enrollment at 11:05 p.m. The House's adoption of H.B. 1434 appears on page 3528 of the House Journal and enrollment is recorded at 11:03 p.m. Since the journal reflects the order of the adoption of the conference committee reports, we conclude that H.B. 1671 is the latest in time of enactment. Since H.B. 1671 prevails, the composition of the board authorized to appoint the county auditor in Harris County is made up of the judges of the district courts in Harris County and the county judge.

Very truly yours,



Tom G. Davis
Assistant Attorney General
Opinion Committee

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